Lorin L. Reisner
Shannon Rose Selden
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000
Attorneys for Defendant/Counterclaim-Plaintiff Old Navy, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L-7 DESIGNS, INC.,

Plaintiff/Counterclaim-Defendant,

- against -

OLD NAVY, LLC,

Defendant/Counterclaim-Plaintiff.

09 Civ. 1432 (DC)
ECF Case

ANSWER TO FIRST AMENDED COMPLAINT AND FIRST AMENDED COUNTERCLAIMS OF OLD NAVY, LLC

PUBLIC VERSION

Old Navy, LLC ("Old Navy"), by and through its undersigned attorneys, Debevoise & Plimpton LLP, for its Answer to the First Amended Complaint of plaintiff L-7 Designs, Inc. ("L-7 Designs") dated April 17, 2009 (the "Complaint") and its First Amended Counterclaims against L-7 Designs herein, states as follows:

AMENDED COUNTERCLAIMS

Preliminary Statement

1. Old Navy seeks damages and other relief based on the breach by L-7 Designs, by and through its representatives Todd Oldham and Todd Oldham Studio, of a Creative

Services Agreement dated September 21, 2007 between Old Navy and L-7 Designs (the "Agreement"). Old Navy also seeks a declaration that L-7 Designs breached the Agreement and that Old Navy acted properly and in accordance with the Agreement.

2. Under the Agreement, L-7 Designs committed that its President, Todd Oldham, and Todd Oldham Studio would "provide services as the Design Creative Director for Old Navy." Agreement, Scope of Work § 1. [redacted]

3. The Agreement further required that Mr. Oldham:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

4. After only several months on the job, however, Mr. Oldham began neglecting his obligations and the obligations of L-7 Designs under the Agreement. Mr. Oldham's involvement with Old Navy became fleeting, episodic and perfunctory. His performance lacked vision, insight or passion. Mr. Oldham failed to provide any meaningful input on design processes and procedures and failed to provide the guidance, direction and effort required under the Agreement.

5. Rather than performing his obligations and the obligations of L-7 Designs, Mr. Oldham instead devoted his energy and attention to pressing Old Navy to launch a TODD OLDHAM branded line of products. [redacted]

6. Despite extensive good faith efforts by Old Navy to negotiate an acceptable agreement, the parties were unable to agree on terms for a launch of the proposed line. Among the stumbling blocks were: (i) the insistence by Mr. Oldham and his representatives that the proposed line be pursued during a time of substantial uncertainty in the business climate; (ii) repeated demands by Mr. Oldham and his representatives for "minimum guaranteed" payments – [redacted] (iii) repeated threats by Mr. Oldham and his representatives to file a lawsuit if

Old Navy did not capitulate to their demands; and (iv) other outrageous terms, wildly shifting positions, and pressure tactics pursued by Mr. Oldham and his representatives.

7. During this process, it became clear that Mr. Oldham and L-7 Designs were not negotiating in good faith and were acting in a manner that was flatly inconsistent with the collaborative partnership essential to the success of the proposed line.

8. On February 17, 2009, L-7 Designs took further action inconsistent with its contractual obligations by filing this baseless lawsuit against Old Navy. In addition to the prior failures by Mr. Oldham and L-7 Designs to meet their obligations under the Agreement, the filing of a lawsuit against Old Navy violated and rendered it impossible for L-7 Designs and Mr. Oldham to perform their contractual obligations, including to "motivate, inspire, coach and share vision" with Old Navy, provide the meaningful input and other contributions to Old Navy required under the Agreement, and to develop and express Old Navy's creative point of view internally and externally, including in public relations activities.

Parties

9. Old Navy is a Delaware limited liability company with its principal place of business at 550 Terry Francois Boulevard, San Francisco, California 94158.

10. Upon information and belief, L-7 Designs, Inc. is a corporation organized and existing under the laws of the State of Texas, with a principal place of business at 20 Vesey Street, Suite 200, New York, New York 10007.

11. Todd Oldham signed the Agreement on behalf of L-7 Designs and upon information and belief is the President of L-7 Designs. Upon information and belief, Todd Oldham Studio is an affiliate, subsidiary, division or related entity of L-7 Designs.

The Creative Services Agreement

12. In or about June 2007, Mr. Oldham's agent, Vital Vayness, contacted Old Navy to inquire whether Old Navy might be interested in working with Mr. Oldham. Mr. Vayness informed Old Navy that Mr. Oldham admired the Old Navy brand and would like to explore possible arrangements to work with Old Navy.

13. Old Navy was receptive to Mr. Oldham's expressed interest in its business, and discussions began about a possible role for Mr. Oldham. Although Old Navy proposed that Mr. Oldham become an employee of Old Navy, Mr. Oldham rejected this suggestion. It ultimately was agreed that Mr. Oldham and his design studio would be engaged, in the capacity of an independent contractor, as Old Navy's Design Creative Director. The arrangement between the parties was set forth in a Creative Services Agreement and Scope of Work ("SOW") incorporated therein, entered into between Old Navy and L-7 Designs as of September 21, 2007 (the "Agreement").

Terms of the Agreement

14. Under the Agreement, Old Navy agreed to provide L-7 Designs with compensation that included: [redacted] in connection with services provided under the Agreement. Id.

15. Under the Agreement, L-7 Designs committed that Todd Oldham and Todd Oldham Studio would "provide services as the Design Creative Director for Old Navy." Agreement, Scope of Work § 1. The Agreement required that Mr. Oldham [redacted]

16. The Agreement further required that Mr. Oldham:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

17. The contractual responsibilities of L-7 Designs had important business implications for Old Navy. Old Navy and its designers relied on Mr. Oldham to provide the

creative guidance critical to creating Old Navy's core fashion products, and Mr. Oldham was expressly obligated to provide input to the team at critical points in the design process.

Breach of the Agreement by L-7 Designs

18. L-7 Designs failed to meet its contractual obligations. Although Mr. Oldham initially engaged with Old Navy and its design team, after he had been in his position approximately six months, Mr. Oldham became disengaged and his performance began seriously to decline. Mr. Oldham arrived for meetings unprepared and provided only superficial contributions to the Old Navy creative team. He failed to motivate, inspire or coach the design team and ceased to have any meaningful involvement in the process of initiating, developing, modifying and finalizing the design collections. Instead of inspiring and directing the design development process at kick-off and seeing the collections through to completion, he offered perfunctory suggestions and made no meaningful contributions to the process. Mr. Oldham's performance as Design Creative Director deteriorated to the point of being nearly non-existent, and he failed to deliver the services expressly required by the Agreement.

19. For example, in or about April 2008, Mr. Oldham failed to develop initial creative concepts or otherwise direct the creative design development process for the upcoming collection cycle. Instead, Mr. Oldham sent a box of materials to Old Navy's office that left Old Navy personnel in disbelief and without any direction or guidance. He was unprepared for meetings and did not provide any meaningful input during the design process. Old Navy personnel were forced to develop the design concept and processes for the cycle without any meaningful direction or participation from Mr. Oldham. Mr. Oldham failed to

meet his obligations to work with the Old Navy creative team, assist the team and guide team members as they developed, modified and finalized the collections.

20. In or about September 2008, Mr. Oldham again failed to motivate, inspire or coach the Old Navy design team as it began work on the collection cycle. Instead of presenting initial creative concepts and direction to the team, Mr. Oldham met with a single senior designer briefly in the Old Navy cafeteria, and provided him with a handful of photocopied images. The images were useless and clearly had been thrown together quickly and without any genuine effort. Mr. Oldham obviously was unprepared and provided no vision or inspiration. Mr. Oldham neglected his obligations to work with the Old Navy creative team throughout the collection cycle, and again failed to assist the team and guide team members as they developed, modified and finalized the collections.

21. When planning for the next collection cycle began in or about November 2008, Mr. Oldham again failed to provide any meaningful design contributions or inspiration. Instead, during a meeting with a senior Old Navy designer, Mr. Oldham delivered what appeared to be paint color swatches from a hardware store. Mr. Oldham's token effort provided no vision, insight or passion. Throughout the collection cycle, Mr. Oldham again failed to meet his obligations to work with the Old Navy creative team, assist the team and guide team members as they developed, modified and finalized the collections.

22. During the next design cycle, which began in or about February 2009, Mr. Oldham continued to have only the most superficial engagement with the Old Navy design team. He arrived for his kickoff meeting with the senior Old Navy designer responsible for its largest apparel line with nothing but a blank sheet of paper. Mr. Oldham failed to present

initial creative concepts or direction, to share vision or insight with Old Navy designers, or to make any attempt to motivate or inspire the Old Navy team throughout the collection cycle. Again, he failed to meet his obligations to assist the Old Navy creative team and guide team members as they developed, modified and finalized the collections.

Negotiations Regarding a "Todd Oldham" Brand Line

23. Under Section 5 of the SOW, the parties acknowledged that it was their [redacted]

24. Old Navy negotiated in good faith with Mr. Oldham toward the objective contemplated by Section 5 of the Scope of Work. Old Navy senior executives, including the President of Old Navy, Tom Wyatt, met, spoke and exchanged emails with Mr. Oldham and his agent in an attempt to develop acceptable terms and conditions.

25. During these negotiations, a number of differences emerged between the parties, including the types of products to be included in the proposed line, the number of stores in which to launch the line, the staffing necessary to support the line, and the timing of

any launch. One particularly significant difference involved the timing for the proposed line. Throughout the negotiations, Old Navy repeatedly made clear to Mr. Oldham that Old Navy was prepared to work toward the development and launch of a future TODD OLDHAM brand line, but that in the present economic environment and business circumstances an extensive, near-term launch was not feasible. A second particularly significant difference related to Mr. Oldham's repeated demands for multi-million dollar minimum guaranteed payments, to be paid without regard to the success or failure of the line or its impact, if any, on Old Navy retail sales, and without regard to business conditions. Mr. Oldham's persistently unreasonable demands on this point, and his lack of responsiveness to the economic realities and to Old Navy's business practices and concerns, made it difficult to achieve progress in the negotiations regarding a branded line. Mr. Oldham also failed to prove any specific design detail or agree to comply with Old Navy's copyright ownership policies.

26. Nonetheless, despite Mr. Oldham's consistent refusal to adjust his demands, Old Navy continued to engage in good faith negotiations. On January 8, 2009, Mr. Wyatt, the President of Old Navy, provided Mr. Oldham's agent, Mr. Vayness, with a detailed proposal setting forth key business terms for a proposed TODD OLDHAM branded line (the "January 8 Proposal"). The January 8 Proposal [redacted]

[redacted] Mr. Wyatt requested that Mr. Oldham promptly provide proposals for the "design and aesthetic" of the proposed line.

27. In response, Mr. Oldham renewed his threat of legal action and made a series of outrageous and unreasonable demands. In an email to Mr. Wyatt on January 8, 2009, Mr. Oldham stated: [redacted] Attached hereto as Exhibit A is a copy of Mr. Oldham's January 8, 2009 email. During a telephone call with Mr. Wyatt on January 10, 2009, Mr. Oldham's agent demanded that Mr. Oldham receive [redacted]

28. On January 11, 2009, Mr. Oldham's agent sent an email to Mr. Wyatt confirming these minimum sales and minimum guaranteed payment demands. [redacted] Attached hereto as Exhibit B is a copy of the January 11, 2009 email from Mr. Oldham's agent to Old Navy.

29. In response, Mr. Wyatt sent an email to Mr. Oldham's agent [redacted]

30. [redacted]

31. Mr. Wyatt spoke with Mr. Vayness three days later, on January 15, 2009. [redacted] In further correspondence, including an email on January 17, 2009, Mr. Vayness repeated Mr. Oldham's demand for a [redacted]

32. Despite Mr. Oldham's unreasonable demands, Old Navy indicated again its [redacted]

33. Mr. Oldham and his representatives nevertheless continued to make demands that were unacceptable to Old Navy. Mr. Oldham also attempted to end-run the Old Navy negotiators by going "above their heads" to a member of the Board of Directors of Gap, Inc. and made unhelpful and unproductive comments to Old Navy design personnel concerning the negotiation process. Mr. Oldham also continued his threats of legal action if his demands were not met.

34. On February 2, 2009, Old Navy informed Mr. Oldham that a revised proposal [redacted] was unacceptable. [redacted]

35. In a cynical effort to bolster Mr. Oldham's litigation position, later on February 2, 2009, Mr. Oldham's agent purported to represent that Mr. Oldham suddenly was "now

prepared to agree" to terms that Old Navy previously suggested in its January 8 Proposal (terms that Mr. Oldham previously had criticized, rejected and threatened to litigate over), although Mr. Oldham still failed to provide any specific design details or agree to Old Navy's copyright ownership policies. Based on the various positions previously taken by Mr. Oldham and the manner in which the negotiations had taken place, Old Navy viewed Mr. Oldham's belated expressions of compromise as unacceptable. [redacted]

[redacted]

[redacted]

36. On February 17, 2009, L-7 Designs took further action inconsistent with its contractual obligations by filing this baseless lawsuit against Old Navy. In addition to the prior failures by Mr. Oldham and L-7 Designs to meet their obligations under the Agreement, the filing of a lawsuit against Old Navy violated and rendered it impossible for L-7 Designs and Mr. Oldham to perform their contractual obligations, including to "motivate, inspire,

coach and share vision" with Old Navy, provide the meaningful input and other contributions to Old Navy required under the Agreement, and to develop and express a creative point of view for Old Navy internally and externally, including in public relations activities.

37. On February 20, 2009, in accordance with paragraph 5 of the Agreement, Old Navy provided L-7 Designs with written notice of termination of the Agreement based on the material breaches of the Agreement by L-7 Designs. Old Navy provided L-7 Designs with full payment pursuant to the Agreement through February 20, 2009.

FIRST COUNTERCLAIM
(Breach of Contract)

38. Old Navy repeats and realleges the allegations in paragraphs 1 through 37 of its Counterclaims as if fully set forth herein.

39. Under the Agreement, L-7 Designs committed that Mr. Oldham would [redacted]

40. L-7 Designs, by and through its representatives Todd Oldham and Todd Oldham Studio, breached its Agreement with Old Navy by neglecting Mr. Oldham's obligations and the obligations of L-7 Designs under the Agreement, including by: (i) failing to present initial creative concepts and direction to the Old Navy design team; (ii) failing to

assist and guide the Old Navy design team as it developed, modified, and finalized collections; (iii) limiting involvement with Old Navy to fleeting, episodic and perfunctory encounters; (iv) failing to provide vision, insight or passion; (v) failing to provide any meaningful input on design processes and procedures; and (vi) filing this baseless lawsuit rendering it impossible to perform its contractual obligations.

41. As a result of the breach by L-7 Designs, Old Navy has suffered damages in an amount to be determined at trial.

SECOND COUNTERCLAIM
(Declaratory Judgment)

42. Old Navy repeats and realleges the allegations in paragraphs 1 through 41 of its Counterclaims as if fully set forth herein.

43. In accordance with the Agreement and Section 5 of the SOW, Old Navy negotiated in good faith with L-7 Designs in an attempt to reach agreement on specific terms and conditions related to a potential TODD OLDHAM branded line of products.

44. Despite Old Navy's good faith efforts, the parties were unable to reach agreement on terms. Throughout the negotiations, L-7 Designs and Mr. Oldham on behalf of L-7 Designs made repeated outrageous demands, took wildly shifting positions, repeatedly threatened to file a lawsuit if Old Navy did not capitulate to their demands, and engaged in a series of unreasonable pressure tactics and other bad-faith conduct.

45. An actual controversy exists between Old Navy and L-7 Designs as to whether the parties performed in accordance with the Agreement.

46. Accordingly, Old Navy is entitled to a declaration that: (i) Old Navy acted properly and in accordance with the Agreement (ii) L-7 Designs breached its obligations

under the Agreement and (iii) Old Navy is not obligated to launch or enter into an agreement to launch a branded line.

WHEREFORE, Old Navy respectfully requests that the Court enter judgment for Old Navy on its Counterclaims: (a) ordering L-7 Designs to pay for all of Old Navy's legal fees, expenses and other costs associated with the lawsuit filed by L-7 Designs; (b) ordering L-7 Designs to pay such damages as may be determined at trial together with interest and costs; and (c) declaring that Old Navy acted properly and in accordance with the Agreement, that L-7 Designs breached its obligations under the Agreement and that Old Navy is not obligated to launch or enter into an agreement to launch a TODD OLDHAM branded line.

ANSWER

Old Navy, LLC ("Old Navy"), by and through its undersigned attorneys, Debevoise & Plimpton LLP, for its Answer to the Complaint of plaintiff L-7 Designs, Inc. ("L-7 Designs" or "Plaintiff") states as follows:

1. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Old Navy denies the allegations contained in paragraph 2 of the Complaint, except admits that Old Navy is a Delaware limited liability company with a principal place of business at 550 Terry Francois Boulevard, San Francisco, California 94158.

3. Old Navy denies the allegations contained in paragraph 3 of the Complaint, except admits that the Complaint purports to assert various claims under federal and state law.

4. Old Navy denies the allegations contained in paragraph 4 of the Complaint, except admits that Plaintiff claims repudiation and breach of contract.

5. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, except admits that plaintiff purports to base jurisdiction on the principles and provisions referenced in paragraph 5 of the Complaint.

6. Old Navy neither admits nor denies the allegations contained in paragraph 6 of the Complaint to the extent they consist of legal conclusions to which no response is required, except admits that Section 14 of the Agreement provides that "the parties submit and consent to the exclusive jurisdiction and venue of the courts of New York," Creative Services Agreement § 14, and respectfully refers the Court to the full text of the Agreement for its true and complete contents and denies any allegation inconsistent therewith.

7. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, except admits that Todd Oldham is a designer.

9. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.

19. Old Navy denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint

20. Old Navy denies the allegations contained in Paragraph 20 of the Complaint, except (i) admits that Old Navy's parent corporation, Gap, Inc. ("Gap"), launched the Old Navy chain of retail stores in 1994; (ii) admits that Gap owns the Old Navy and Banana Republic brands; (iii) admits that there are over 1,000 Old Navy retail stores in the United States and Canada and an online retail site located at www.oldnavy.com, (iv) admits that Gap, Inc. reported that global net sales for the Old Navy brand during the 53 weeks ended February

3, 2007, were $6.829 billion, and (v) respectfully refers the Court to the full text of the article attached as Exhibit 8 for its true and complete content.

21. Old Navy denies the allegations contained in paragraph 21 of the Complaint, except respectfully refers the Court to the full text of the printed pages from the Wikipedia website attached as Exhibit 9 for their true and complete content.

22. Old Navy denies the allegations contained in Paragraph 22 of the Complaint, except (i) admits that Old Navy's global net sales declined in 2007 and 2008, (ii) admits that the news articles referenced in Paragraph 22 comment on Old Navy's sales, and (iii) respectfully refers the Court to the full text of the referenced news articles attached as Exhibit 10 for their true and complete content.

23. Old Navy denies the allegations contained in Paragraph 23 of the Complaint, except (i) admits that Old Navy made changes to its marketing, advertising, and clothing line in 2007, (ii) admits that Old Navy introduced a redesigned logo in 2007, (iii) admits that Old Navy began offering an increased number of collections per year in 2007, and (iv) respectfully refers the Court to the full text of the documents attached as Exhibit 10 for their true and complete content.

24. Old Navy denies the allegations contained in paragraph 24 of the Complaint, except (i) admits that L-7 Designs and Mr. Oldham approached Old Navy for the purpose of seeking a possible contractual arrangement, (ii) admits that Old Navy entered into a Creative Services Agreement with L-7 Designs dated September 21, 2007, and (iii) respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

25. Old Navy denies the allegations contained in paragraph 25 of the Complaint, except (i) admits that L-7 Designs and Mr. Oldham approached Old Navy for the purpose of seeking a possible contractual arrangement, (ii) admits that Old Navy entered into a Creative Services Agreement with L-7 Designs dated September 21, 2007, and (iii) respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

26. Old Navy denies the allegations contained in paragraph 26 of the Complaint, except (i) admits that L-7 Designs and Mr. Oldham approached Old Navy for the purpose of seeking a possible contractual arrangement, (ii) admits that Old Navy entered into a Creative Services Agreement with L-7 Designs dated September 21, 2007, and (iii) respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

27. Old Navy denies the allegations contained in paragraph 27 of the Complaint, except (i) admits that L-7 Designs and Mr. Oldham approached Old Navy for the purpose of seeking a possible contractual arrangement, (ii) admits that Old Navy entered into a Creative Services Agreement with L-7 Designs dated September 21, 2007, and (iii) respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

28. Old Navy denies the allegations contained in paragraph 28 of the Complaint, except admits that Old Navy and L-7 Designs entered into a Creative Services Agreement dated September 21, 2007, respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

29. Old Navy admits that Section 14 of the Agreement referenced in paragraph 29 of the Complaint states: "This Agreement shall be governed and construed in accordance with the laws of the State of New York, exclusive of choice of law rules." Creative Services Agreement § 14.

30. Old Navy denies the allegations contained in paragraph 30 of the Complaint, except respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegations inconsistent therewith.

31. Old Navy denies the allegations contained in paragraph 31 of the Complaint, except respectfully refers the Court to the full text of the Agreement and the Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

32. Old Navy denies the allegations contained in paragraph 32 of the Complaint, except respectfully refers the Court to the full text of the Agreement and the Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

33. Old Navy denies the allegations contained in paragraph 33 of the Complaint, except respectfully refers the Court to the full text of the Agreement and the Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

34. Old Navy denies the allegations contained in paragraph 34 of the Complaint, except respectfully refers the Court to the full text of the Agreement and the Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

35. Old Navy denies the allegations contained in paragraph 35 of the Complaint, except respectfully refers the Court to the full text of the Agreement and the Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

36. Old Navy denies the allegations contained in paragraph 36 of the Complaint, except admits that Old Navy issued a press release dated September 21, 2007 (the "Press Release"), and respectfully refers the Court to the full text of the Press Release for its true and complete content and denies any allegations inconsistent therewith.

37. Old Navy denies the allegations contained in paragraph 37 of the Complaint, except admits that there were media reports following the Press Release, and respectfully refers the Court to the reports attached as Exhibit 12 for their true and complete content.

38. Old Navy denies the allegations contained in paragraph 38 of the Complaint.

39. Old Navy denies the allegations contained in paragraph 39 of the Complaint, except respectfully refers the Court to the full text of the referenced emails dating from November 2007 through March 2008 for their true and complete content.

40. Old Navy denies the allegations contained in paragraph 40 of the Complaint, except respectfully refers the Court to the full text of the referenced October 8, 2008 email for its true and complete content.

41. Old Navy denies the allegations contained in paragraph 41 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

42. Old Navy denies the allegations contained in paragraph 42 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

43. Old Navy denies the allegations contained in paragraph 43 of the Complaint, except respectfully refers the Court to the full text of the document attached as Exhibit 16 for its true and complete content.

44. Old Navy denies the allegations contained in paragraph 44 of the Complaint, except respectfully refers the Court to the Agreement and Scope of Work for their true and complete content and denies any allegations inconsistent therewith.

45. Old Navy denies the allegations contained in paragraph 45 of the Complaint, except admits that Gap, Inc., received the email and document attached as Exhibit 17 to the Complaint and respectfully refers the Court to the full text of the referenced documents for their true and complete content.

46. Old Navy denies the allegations contained in paragraph 46 of the Complaint, except respectfully refers the Court to the full text of the referenced May 1, 2008 email for its true and complete content and denies any allegation inconsistent therewith.

47. Old Navy denies the allegations contained in paragraph 47 of the Complaint.

48. Old Navy denies the allegations contained in paragraph 48 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

49. Old Navy denies the allegations contained in paragraph 49 of the Complaint, except respectfully refers the Court to the full text of the referenced document for its true and complete content.

50. Old Navy denies the allegations contained in paragraph 50 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

51. Old Navy denies the allegations contained in paragraph 51 of the Complaint, except respectfully refers the Court to the full text of the referenced document for its true and complete content.

52. Old Navy denies the allegations contained in paragraph 52 of the Complaint, except admits that in or about late September 2008 Old Navy suggested deferring its discussions with Mr. Oldham and his representative regarding a TODD OLDHAM brand line.

53. Old Navy denies the allegations contained in paragraph 53 of the Complaint, except respectfully refers the Court to the full text of the email from Mr. Vayness to Tom Wyatt dated October 7, 2008 and Mr. Wyatt's email in response dated October 8, 2008, attached as Exhibit 23, for their true and complete content.

54. Old Navy denies the allegations contained in paragraph 54 of the Complaint, except respectfully refers the Court to the full text of the document attached as Exhibit 24 for its true and complete content.

55. Old Navy denies the allegations contained in paragraph 55 of the Complaint, except admits that Mr. Wyatt expressed regret that economic conditions presently made introduction of a branded line challenging for Old Navy.

56. Old Navy denies the allegations contained in paragraph 56 of the Complaint, and denies any breach of the Agreement.

57. Old Navy denies the allegations contained in paragraph 57 of the Complaint, except respectfully refers the Court to the full text of the letter attached as Exhibit 25 for its true and complete content.

58. Old Navy denies the allegations contained in paragraph 58 of the Complaint, except respectfully refers the Court to the full text of the documents attached as Exhibit 26 for their true and complete content.

59. Old Navy denies the allegations contained in paragraph 59 of the Complaint, except respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegation inconsistent therewith.

60. Old Navy denies the allegations contained in paragraph 60 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

61. Old Navy denies the allegations contained in paragraph 61 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

62. Old Navy denies the allegations contained in paragraph 62 of the Complaint, except respectfully refers the Court to the full text of the referenced document for their true and complete content.

63. Old Navy denies the allegations contained in paragraph 63 of the Complaint.

64. Old Navy denies the allegations contained in paragraph 64 of the Complaint, except admits that the parties entered a valid and binding Creative Services Agreement and specifically denies that Old Navy breached any provision of that Agreement.

65. Old Navy denies the allegations contained in paragraph 65 of the Complaint.

66. Old Navy denies the allegations contained in paragraph 66 of the Complaint, except respectfully refers the Court to the full text of the Agreement for its true and complete content and denies any allegation inconsistent therewith.

67. Old Navy denies the allegations contained in paragraph 67 of the Complaint, except admits that on February 20, 2009, in accordance with paragraph 5 of the Agreement, Old Navy provided L-7 Designs with notice of termination of the Agreement, respectfully refers the Court to the full text of the referenced February 20, 2009 letter for its true and complete content and denies any allegation inconsistent therewith.

68. Old Navy denies the allegations contained in paragraph 68 of the Complaint, respectfully refers the Court to the full text of the referenced February 20, 2009 letter for its true and complete content and denies any allegation inconsistent therewith.

69. Old Navy denies the allegations contained in paragraph 69 of the Complaint and respectfully refers the Court to the full text of the referenced documents for their true and complete content.

70. Old Navy denies the allegations contained in paragraph 70 of the Complaint.

71. Old Navy denies the allegations contained in paragraph 71 of the Complaint.

72. Old Navy denies the allegations contained in paragraph 72 of the Complaint.

73. Old Navy denies the allegations contained in paragraph 73 of the Complaint, except admits that Gap, Inc. received a letter from counsel for L-7 Designs dated February 25, 2009 and respectfully refers the Court to the full text of the referenced letter for its true and complete content.

74. Old Navy denies the allegations contained in paragraph 74 of the Complaint.

75. Old Navy denies the allegations contained in paragraph 75 of the Complaint, except admits that Old Navy provided L-7 Designs with full payment pursuant to the Agreement through February 20, 2009, including by payment wired to L-7 Designs on February 22, 2009.

76. Old Navy denies the allegations contained in paragraph 76 of the Complaint.

77. Old Navy denies the allegations contained in paragraph 77 of the Complaint. Old Navy avers that it was Mr. Oldham (not Old Navy) who issued press releases and attempted to generate publicity relating to this lawsuit. Attached hereto as Exhibit F are press releases issued by Mr. Oldham dated March 2, 2009 and March 30, 2009.

78. Old Navy denies the allegations contained in paragraph 78 of the Complaint.

79. Old Navy denies the allegations contained in paragraph 79 of the Complaint, except respectfully refers the Court to the full text of the referenced March 3, 2009 article for its true and complete content.

80. Old Navy denies the allegations contained in paragraph 80 of the Complaint and specifically denies that the quoted language was or is attributed to Old Navy.

81. Old Navy denies the allegations contained in paragraph 81 of the Complaint, except respectfully refers the Court to the full text of the referenced April 2, 2009 article for its true and complete content.

82. Old Navy denies the allegations contained in paragraph 82 of the Complaint.

83. Old Navy denies the allegations contained in paragraph 83 of the Complaint, except respectfully refers the Court to the full text of the referenced documents for their true and complete content.

84. Old Navy denies the allegations contained in paragraph 84 of the Complaint, and specifically denies that there was any "campaign," particularly because it was Mr. Oldham who pursued publicity and Old Navy simply responded to press inquiries generated by Mr. Oldham's publicity efforts.

ANSWER TO COUNT I
(Request for Declaratory Judgment)

85. Old Navy repeats and realleges its responses to paragraphs 1 through 84 of the Complaint as if fully set forth herein.

86. Old Navy denies the allegations contained in paragraph 86 of the Complaint.

87. Old Navy denies the allegations contained in paragraph 87 of the Complaint.

88. Old Navy denies the allegations contained in paragraph 88 of the Complaint.

89. Old Navy denies the allegations contained in paragraph 89 of the Complaint.

90. Old Navy denies the allegations contained in paragraph 90 of the Complaint.

91. Old Navy denies the allegations contained in paragraph 91 of the Complaint.

92. Old Navy denies the allegations contained in paragraph 92 of the Complaint, except admits that an actual controversy exists between Old Navy and L-7 Designs as to performance and termination of the Agreement.

ANSWER TO COUNT II
(Trade Disparagement Under 15 U.S.C. § 1125(a)(1)(B))

93. Old Navy repeats and realleges its responses to paragraphs 1 through 92 of the Complaint as if fully set forth herein.

94. Old Navy denies the allegations contained in paragraph 94 of the Complaint.

95. Old Navy denies the allegations contained in paragraph 95 of the Complaint.

96. Old Navy denies the allegations contained in paragraph 96 of the Complaint.

97. Old Navy denies the allegations contained in paragraph 97 of the Complaint.

98. Old Navy denies the allegations contained in paragraph 98 of the Complaint.

99. Old Navy denies the allegations contained in paragraph 99 of the Complaint.

100. Old Navy denies the allegations contained in paragraph 100 of the Complaint.

101. Old Navy denies the allegations contained in paragraph 101 of the Complaint.

102. Old Navy denies the allegations contained in paragraph 102 of the Complaint.

103. Old Navy denies the allegations contained in paragraph 103 of the Complaint.

ANSWER TO COUNT III
(Breach of Contract Under the Common Law of the State of New York)

104. Old Navy repeats and realleges its responses to paragraphs 1 through 103 of the Complaint as if fully set forth herein.

105. Old Navy admits the allegation contained in paragraph 105 of the Complaint.

106. Old Navy denies the allegations contained in paragraph 106 of the Complaint.

107. Old Navy denies the allegations contained in paragraph 107 of the Complaint.

108. Old Navy denies the allegations contained in paragraph 108 of the Complaint.

109. Old Navy denies the allegations contained in paragraph 109 of the Complaint.

110. Old Navy denies the allegations contained in paragraph 110 of the Complaint.

ANSWER TO COUNT IV
(Breach of Implied Duty of Good Faith & Fair Dealing)

111. Old Navy repeats and realleges its responses to paragraphs 1 through 110 of the Complaint as if fully set forth herein.

112. Old Navy denies the allegations contained in paragraph 112 of the Complaint, except neither admits nor denies the allegations to the extent they consist of legal conclusions to which no response is required.

113. Old Navy denies the allegations contained in paragraph 113 of the Complaint.

114. Old Navy denies the allegations contained in paragraph 114 of the Complaint.

115. Old Navy denies the allegations contained in paragraph 115 of the Complaint.

116. Old Navy denies the allegations contained in paragraph 116 of the Complaint.

ANSWER TO COUNT VI
(Fraud Under the Common Law of the State of New York)

117. Old Navy repeats and realleges its responses to paragraphs 1 through 116 of the Complaint as if fully set forth herein.

118. Old Navy denies the allegations contained in paragraph 118 of the Complaint.

119. Old Navy denies the allegations contained in paragraph 119 of the Complaint.

120. Old Navy denies the allegations contained in paragraph 120 of the Complaint.

121. Old Navy denies the allegations contained in paragraph 121 of the Complaint.

122. Old Navy denies the allegations contained in paragraph 122 of the Complaint.

123. Old Navy denies the allegations contained in paragraph 123 of the Complaint.

124. Old Navy denies the allegations contained in paragraph 124 of the Complaint.

125. Old Navy denies the allegations contained in paragraph 125 of the Complaint.

126. Old Navy denies the allegations contained in paragraph 126 of the Complaint.

127. Old Navy denies the allegations contained in paragraph 127 of the Complaint.

RESPONSE TO RELIEF REQUESTED

Old Navy denies that Plaintiff is entitled to any of the relief requested or to any relief, and denies all other allegations of the Complaint except as specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Old Navy acted properly and in accordance with the Agreement.

THIRD AFFIRMATIVE DEFENSE

Old Navy's payment obligations and other performance under the Agreement were excused by the breaches of the Agreement by L-7 Designs.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to plead fraud with the requisite particularity.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff cannot demonstrate that Old Navy made any false or misleading statement or that any omission of information rendered any statement false or misleading.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot satisfy the required element of intent to defraud.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff cannot demonstrate reliance.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff cannot demonstrate that Old Navy made any statement that is actionable under the Lanham Act.

NINTH AFFIRMATIVE DEFENSE

The claims contained in the Complaint are barred under the doctrines of waiver, estoppel and laches.

TENTH AFFIRMATIVE DEFENSE

The claims contained in the Complaint are barred under the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Old Navy reserves the right to amend this Answer and to assert additional defenses or to supplement, alter, or change this Answer, or to assert any additional counterclaims, upon ascertaining more definite facts during and upon completion of their investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, Old Navy respectfully requests that the Court:

1. Enter judgment for Old Navy on its Counterclaims: (a) ordering L-7 Designs to pay for all of Old Navy's legal fees, expenses and other costs associated with the lawsuit filed by L-7 Designs; (b) ordering L-7 Designs to pay such damages as may be determined at trial together with interest and costs; and (c) declaring that Old Navy acted properly and in

accordance with the Agreement, that L-7 Designs breached its obligations under the Agreement and that Old Navy has no obligation to launch or enter into an agreement to launch a TODD OLDHAM branded line of products.

2. Enter judgment for Old Navy on Plaintiff's Complaint: (a) dismissing the Complaint in its entirety with prejudice; (b) awarding to Old Navy costs and attorneys' fees associated with this action; and (c) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 1, 2009

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

By: /s/ Lorin L. Reisner
Lorin L. Reisner
Shannon Rose Selden

llreisner@debevoise.com
srselden@debevoise.com
919 Third Avenue
New York, New York 10022
(212) 909-6000 (phone)
(212) 909-6836 (fax)
Attorneys for Defendant/Counterclaim-Plaintiff Old Navy, LLC